



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

March 30, 1998

REPLY TO: 6EN-W

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (Z 698 451 044)

Ms. Wendy Rozacky  
Section Chief, Enforcement  
Watershed Management Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, TX 78711

Re: Notice of Proposed Administrative Penalty Assessment  
Docket No. VI-98-1625  
NPDES Permit No. TXR05B556, TXR05B295

Dear Ms. Rozacky:

Enclosed is a copy of the administrative complaint which the Administrator of the United States Environmental Protection Agency (EPA) proposes to issue to the City of El Paso pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). The Administrator proposes to issue the complaint to begin the process to administratively assess a Class II civil penalty of \$137,500 against the City of El Paso for violations of the Clean Water Act. Because the violations have occurred in the State of Texas, EPA is offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference with Mr. Taylor Sharpe within two (2) weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment. If you wish to request a conference or if you have any comments or questions regarding the matter, please call Mr. Sharpe at telephone (214) 665-7112.

Sincerely yours,

A handwritten signature in cursive script, reading "Samuel Coleman", is written over the typed name.

Samuel Coleman, P.E.  
Director  
Compliance Assurance and  
Enforcement Division (6EN)

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

March 30, 1998

REPLY TO: 6EN-WT

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (Z 698 451 043)

Honorable Carlos Ramirez  
City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901

Re: Notice of Proposed Assessment of a Class II Civil Penalty  
Docket No. VI-98-1625  
NPDES Permit No. TXR05B556, TXR05B295

Dear Mayor Ramirez:

Enclosed is a document entitled "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon" (hereinafter the "Complaint"). We have filed this Complaint against the City of El Paso under the authority of Section 309(g) of the Clean Water Act (hereinafter the "Act"), 33 U.S.C. § 1319(g). In the Complaint, the U.S. Environmental Protection Agency (EPA) alleges that the City of El Paso has violated various provisions of the Clean Water Act, its implementing regulations, and the terms of the National Pollutant Discharge Elimination System (NPDES) permit issued under the authority of the Act. The violations the EPA is alleging are specifically set out in Section II of the Complaint.

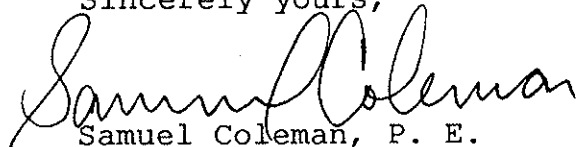
By law, the City has a right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please pay particular attention to the Complaint Section IV entitled "Notice of Opportunity to Request a Hearing." Note that should the City fail to request a hearing within twenty (20) days of receipt of the Complaint, it will waive its right to such a hearing and, the proposed civil penalty may be assessed against it without further proceedings.

Whether or not the City requests a hearing, we invite you to confer informally with the EPA concerning the alleged violations and the amount of the proposed penalty. The City may represent itself or be represented at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by the Respondent and by the Regional Administrator of EPA Region 6. The issuance of such a Consent Agreement would constitute a waiver by a Respondent of its right to a hearing on, and to a Judicial appeal of, the agreed civil penalty.

A request for an informal conference does not extend the twenty (20) days by which the City must request or waive a hearing on the proposed penalty assessment; the two procedures can be pursued simultaneously. If there are any questions, or the City wishes to discuss the possibility of a settlement of this matter, please contact Mr. Taylor Sharpe, Enforcement Officer, 6EN-WT, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, or telephone (214) 665-7112.

We urge prompt attention to this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Samuel Coleman".

Samuel Coleman, P. E.  
Director  
Compliance Assurance and  
Enforcement Division (6EN)

Enclosures

cc: Ms. Wendy Rozacky  
Section Chief, Enforcement  
Watershed Management Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, TX 78711

FILED

UNITED STATES 98 MAR 30 PM 3:28  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6 REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of § CWA Docket No. VI-98-1625  
§  
CITY OF EL PASO, a § Proceeding to Assess a  
Texas municipality, § Civil Penalty Under § 309(g)  
§ of the Clean Water Act  
Respondent. §  
§ ADMINISTRATIVE COMPLAINT  
Permit No. TXR05B556, TXR05B295 §

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (herein "Complainant"). This Complaint is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits," 40 C.F.R. Part 22, a copy of which is attached.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a penalty.

## II. Findings

1. The City of El Paso (herein "Respondent") is a municipality chartered under the laws of the State of Texas.

2. As a "municipality", Respondent is a "person," as that term is defined at § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

3. At all times relevant to this action, Respondent owned or operated the El Paso International Airport, a municipal airport located at 6701 Convair Road, El Paso, El Paso County, Texas 79925-1091 (herein "the facility").

4. At all times relevant to this action, the facility was a "point source", as that term is defined at § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

5. At all relevant times, the facility "discharged" and was subject to a "discharge" of "pollutants" during periods of rainfall in its storm water runoff, to "waters of the U.S.", as those terms are defined at § 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

6. Under § 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the

National Pollutant Discharge Elimination System (NPDES) program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402(a) of the Act, 33 U.S.C. § 1342(a).

9. Under 40 C.F.R. § 122.26(b)(14), the following categories of facilities are among those considered to be engaging in "industrial activity" for purposes of § 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

... (viii) Transportation facilities classified by the SIC codes listed below which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under categories (i)-(vii) or (ix)-(xi) are associated with industrial activity, and need permit coverage.

SIC Codes included:

- 40 railroad transportation
- 41 local and interurban passenger transit
- 42 trucking & warehousing (except 4221-25, see (xi))
- 43 US postal service
- 44 water transportation
- 45 transportation by air**
- 5171 petroleum bulk stations and terminals

10. At all times relevant to this Order, Respondent owned or operated an airport classified under Standard Industrial Classification (SIC) Code number 4581, a subcategory of SIC Code classification series 45, "transportation by air" (Revised 1987 edition by the Executive Office of the President, Office of Management and Budget), and as such is "industrial activity" within the meaning of § 402(p) of the Act, and 40 C.F.R. §§ 122.1 and 122.26(b)(14)(viii).

11. Oil, grease, total suspended solids, and deicing/anti-icing compounds (e.g. ethylene glycol or propylene glycol) are among the relevant pollutants of concern for this type of industrial activity.

12. Because the facility was a point source that discharged and was subject to a discharge of pollutants to waters of the United States, the facility was required to be covered by a NPDES permit and to discharge pollutants only in compliance with that permit, and as the owner or operator, Respondent was responsible for obtaining permit coverage for the facility, and complying with the conditions of the permit.

13. Pursuant to § 402 of the Act, 33 U.S.C. § 1342, Respondent, applied for and was issued NPDES Permit No. TXR05B556 (herein "the permit"), which became effective on March 30, 1996. Pursuant to § 402 of the Act, 33 U.S.C. § 1342, Respondent, applied for and was issued NPDES Permit No. TXR05B295 (herein "the permit"), which became effective on March 29, 1996. Either

of these applications could be sufficient to obtain coverage for the facility.

14. On May 30, 1997, the facility was inspected by EPA. As a result of this, the facility was found to be in violation of its NPDES permit by not having prepared or implemented a Storm Water Pollution Prevention Plan (SWPPP).

15. Part IV.A. of the permit sets "Deadlines for [Pollution prevention] Plan Preparation and Compliance:

1. Existing Facility. ...all existing facilities and new facilities that begin operation on or before June 25, 1996 shall prepare and implement the plan by June 25, 1996 [date extended to September 25, 1996 by EPA's Office of Water resulting from the December 1995 Federal workers furlough].

16. Part IV.A.1. of the permit was violated in that a SWPPP was not prepared and implemented by September 25, 1996.

17. Respondent's failure to prepare and implement a SWPPP as required by the permit is a violation of § 301 of the Act, 33 U.S.C. § 1311.

18. On December 30, 1997, EPA issued to Respondent Administrative Order Docket Number VI-98-1027, under the authority of § 309(a) of the Act, 33 U.S.C. § 1319(a). That Order required Respondent to 1) prepare a SWPPP, 2) implement a SWPPP, 3) prepare a report detailing how the facility would come into compliance, and 4) meet with EPA in a Show Cause meeting which was subsequently held on March 4, 1998.

19. Under § 309(g) of the Act, 33 U.S.C. § 1319(g), Respondent is liable for a civil penalty in an amount not to



exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$137,500.

20. EPA has notified the Texas Natural Resource Conservation Commission of the issuance of this Complaint and has afforded the State of Texas an opportunity to consult with EPA regarding assessment of an administrative penalty against Respondent, as required by § 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

21. EPA has made arrangements to notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by § 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

22. Based on the foregoing Findings, and pursuant to the authority of §§ 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of \$137,500, which constitutes no more than \$11,000 per day per violation for each violation described above.

23. The proposed penalty amount was determined based on the number of violations, including a consideration of the duration or continuity of each violation, if relevant, up to the statutory

maximum penalty for each separate violation under § 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B).

#### IV. Failure to File an Answer

24. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, RESPONDENT MUST FILE AN ANSWER TO THIS COMPLAINT WITHIN TWENTY (20) DAYS AFTER SERVICE OF THIS COMPLAINT whether or not Respondent requests a hearing as discussed below.

25. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy attached). Failure to file an Answer to this Complaint within twenty (20) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing on the issue of liability. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

26. IF RESPONDENT DOES NOT FILE AN ANSWER TO THIS COMPLAINT WITHIN TWENTY (20) DAYS AFTER SERVICE OF THIS COMPLAINT, A DEFAULT ORDER MAY BE ISSUED AGAINST RESPONDENT PURSUANT TO 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings sixty (60) days after a final order issued upon default.

27. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-HO)  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

28. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. § 22.05 and § 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

29. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy attached), with supplemental Rules at 40 C.F.R. § 22.38.

30. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

31. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present

evidence at such hearing under § 309(g)(4)(B) of the Act,  
33 U.S.C. § 1319(g)(4)(B).

#### VI. Settlement

32. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Taylor Sharpe, Enforcement Officer, at (214) 665-7112.

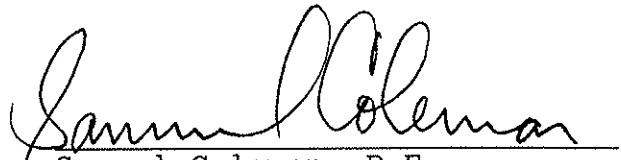
33. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Consent Order pursuant to 40 C.F.R. § 22.18. The issuance of a Consent Agreement and Consent Order would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such Consent Agreement and Consent Order and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the

petitioner's comment was material and was not considered by EPA in the issuance of the Consent Agreement and Consent Order.

34. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under § 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

3/30/98

Date



Samuel Coleman, P.E.,  
Director  
Compliance Assurance and  
Enforcement Division (6EN)

Attachment

Yvonne Evans Smith



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

**JUN 16 1998**

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (P 005 008 656)

Mr. Miles S. Hall  
Assistant City Attorney  
Two Civic Center Plaza  
El Paso, TX 79901-1196

Re: Consent Order  
Docket No. VI-98-1625  
NPDES Permit No. TXR05B556, TXR05B295

Dear Mr. Hall:

This is to acknowledge receipt of the "Consent Order" signed by the city. As no comments were received from the general public during the thirty (30) day public notice period, the Environmental Protection Agency hereby issues this Final Consent Order.

The Consent Order shall become effective thirty (30) days after the date of issuance noted therein. Penalty payment is set forth in Part III of the Consent Order.

If you have any questions regarding this matter, please contact Mr. Taylor Sharpe at telephone (214) 665-7112.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "S. Coleman".

Samuel Coleman, P.E.  
Director  
Compliance Assurance and  
Enforcement Division (6EN)

Enclosure

cc: Ms. Wendy Rozacky  
Section Chief, Enforcement  
Watershed Management Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711

FILED

98 JUN 18 PM 12:30

REGIONAL HEARING CLERK  
EPA REGION VI

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§	CWA Docket No. VI-98-1625
	§	
CITY OF EL PASO, Texas	§	
	§	
Respondent	§	
	§	CONSENT AGREEMENT
Permit Nos. TXR05B556	§	AND CONSENT ORDER
TXR05B295	§	

I. STATUTORY AUTHORITY

This Consent Agreement and Consent Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated that authority to the Regional Administrator of EPA Region 6, who hereby issues this Consent Agreement and Consent Order in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18.

II. CONSENT AGREEMENT / STIPULATIONS

1. The Parties agree that settlement of this matter without litigation will save time and resources, that it is in the public interest, and that the entry of this Consent Agreement and Consent Order is the most appropriate means of resolving this matter.



2. For the purpose of this Consent Agreement and Consent Order, Respondent admits the jurisdictional allegations of the Complaint, accepts EPA's jurisdiction and authority to act in this matter, and acknowledges that the Complaint states a cause of action on which relief could be granted.

3. Respondent expressly waives its right to a hearing or appeal pursuant to Sections 309(g)(2) and (8) of the Act, 33 U.S.C. §§ 1319(g)(2) and (8), on penalty assessment, or on any other issue of law or fact relevant to this proceeding. Respondent waives all defenses which have been or could have been raised to the claims set out in the Complaint, and waives its right to judicial review of this administrative penalty assessment

4. Respondent neither admits nor denies any finding of fact and conclusion of law contained in the Complaint, or any allegation contained herein.

5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the parties agree to the terms of this Consent Agreement and Consent Order and to its issuance. Respondent consents to the assessment and payment of a civil penalty, in the amount and by the method stated below.

6. The City of El Paso (herein "Respondent") is a municipality chartered under the laws of the State of Texas.

7. As a "municipality", Respondent is a "person," as that term is defined at § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. At all times relevant to this action, Respondent owned

or operated the El Paso International Airport, a municipal airport located at 6701 Convair Road, El Paso, El Paso County, Texas 79925-1091 (herein "the facility").

9. Pursuant to § 402 of the Act, 33 U.S.C. § 1342, Respondent applied for coverage for the facility under the Storm Water Multi-Sector General Permit for Industrial Activities (60 Fed. Reg. 50804, September 29, 1995) ("the permit"), and was issued NPDES Permit No. TXR05B556, which became effective on March 30, 1996. Respondent, also applied for and was issued NPDES Permit No. TXR05B295, which became effective on March 29, 1996.

10. The permit authorizes discharges of pollutants associated with industrial activity from point sources (including discharges to or through a municipal separate storm sewer system) to waters of the United States, in accordance with the conditions of the permit, and is the storm water general permit available to Respondent for the relevant activities.

11. On March 30, 1998, based on a May 30, 1997 inspection of the facility, EPA Region 6 issued to Respondent a Complaint which included formal findings of violation, a notice of the proposed assessment of a civil penalty against Respondent, and a notice of Respondent's opportunity to request a hearing on the proposed administrative penalty.

12. Among other things, the Complaint alleged that the City owned or operated the facility as a point source subject to a potential discharge of pollutants, with storm water associated with industrial activity, to waters of the United States, through

Complaint, or which could have been brought under the allegations in the Complaint, based on EPA's knowledge at the time of filing.

17. Payment shall be made within thirty (30) days of the effective date of this Consent Agreement and Consent Order by mailing a City check, cashier's check, or certified check, payable to "Treasurer of the United States", to the following address:

Regional Hearing Clerk  
U.S. EPA, Region 6  
P.O. Box 360582M  
Pittsburgh, PA 15251

Docket No. VI-98-1625 should be clearly typed on the check to ensure credit for payment.

18. Respondent shall send simultaneous notice of payment, including a copy of each check, to each of the following:

- (1) Regional Hearing Clerk (6RC-HO)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733
- (2) Chief, Compliance Assurance (6EN-WC)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733
- (3) Chief, Legal Branch (6EN-L)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

19. If the United States does not receive payment within the time and under the terms specified herein, interest will accrue on the unpaid balance from the due date at the current

annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin, per annum, through the date of payment. Late payments and final payments shall include all accrued interest.

20. If all or part of the payment is overdue, EPA will impose a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent 30-day period. EPA will also apply a twenty percent (20%) per annum penalty on any principal amount not paid within ninety (90) days of the due date pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). Penalties under other federal statutes for failure to make timely payment may also apply.

21. Failure by Respondent to pay the penalty assessed according to the terms of this Consent Agreement and Consent Order, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties .

22. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts assessed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the

terms of this Consent Agreement and Consent Order, shall not be subject to review.

#### IV. GENERAL PROVISIONS

23. To execute this agreement, Respondent shall mail two (2) copies of the Consent Agreement and Consent Order, each with original signatures, to the following:

Mr. Taylor Sharpe (6EN-WT)  
Water Enforcement Branch  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

24. Issuance of this Consent Agreement and Consent Order does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7), 33 U.S.C. § 1319(g)(7) nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. §§ 1319, except as to any requirement to pay any penalty or perform any corrective action not described herein for the claims and allegations contained in the Complaint, or which could have been brought under the allegations in the Complaint, based on the information in EPA's possession at the time of filing.

25. The provisions of this Consent Agreement and Consent Order shall be binding upon Respondent, its Mayor, Council, officials, managers, employees, and their successors.

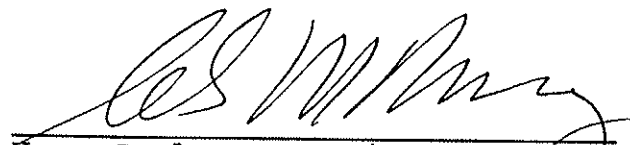
26. Each party agrees to bear its own costs and legal fees

in this matter, except to the extent that Respondent agrees herein to be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this Consent Agreement and Consent Order.

V. EFFECTIVE DATE


27. This Consent Agreement and Consent Order shall become effective thirty (30) days after the date it is signed below on behalf of EPA Region 6, or immediately upon filing with the Regional Hearing Clerk, whichever is later.

In recognition and acceptance of the foregoing:

  
Hon. Carlos M. Ramirez, P.E., Mayor  
for the City of El Paso, Texas


Date: 4-29-98

ATTESTED BY:

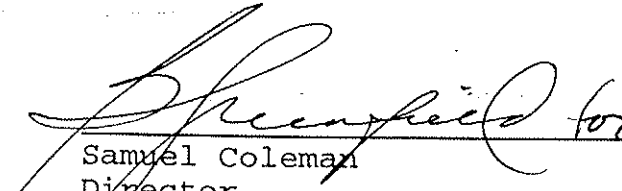
  
Carole Hunter, City Clerk  
for the City of El Paso, Texas

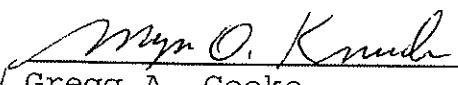
Date: 4-29-98

APPROVED AS TO FORM:

  
Myles S. Hall  
Assistant City Attorney  
for the City of El Paso, Texas

Date: 4/28/98

  
\_\_\_\_\_  
Samuel Coleman  
Director  
Compliance Assurance and  
Enforcement Division  
EPA Region 6

  
\_\_\_\_\_  
for Gregg A. Cooke  
Regional Administrator  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Date: 6/9/98

CERTIFICATE OF SERVICE


I hereby certify that on the 16<sup>th</sup> day of June, 1998, an original of the foregoing Consent Agreement and Consent Order was hand delivered to the Regional Hearing Clerk (6RC-HO), U.S. EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that an duplicate original was placed in the United States Mail, first class postage prepaid, addressed to:

Myles S. Hall  
Assistant City Attorney  
Two Civic Center Plaza  
El Paso, TX 79901-1196

Further, a copy was placed in the United States Mail, first class postage prepaid, addressed to each of the following:

Harless Benthul  
Gilpin, Paxson, & Bersch, L.L.P.  
1900 West Loop South  
Suite 2000  
Houston, TX 77027

Ms. Wendy Rozacky  
Section Chief, Enforcement  
Watershed Management Division  
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Yvonne R. Evans Smith